

National Parliaments: Kenya

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National Parliaments: Kenya

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SUMMARY Kenya enacted a new Constitution in 2010 through which it established a system of government akin to a federation, with legislative authority shared between the national Parliament and county legislatures. At the national level, Kenya has a bicameral Parliament consisting of the National Assembly and the Senate. All members of Parliament are elected for a five-year term.

Under the 2010 Constitution, Kenya opted for a presidential system of government in order to achieve a sharper separation of powers between, and reduce the influence of, the executive body over the legislature. The President and his Cabinet are not members of Parliament. Of the 350 members of the National Assembly, 290 members of any gender are elected directly from single-member constituencies, forty-seven women members are elected directly from each county, and twelve representatives of special interests are nominated by parties based on the number of seats they control in the body. The sixty-eight member Senate consists of forty-seven members directly elected from each county and twenty members nominated by political parties in accordance with their share of seats in the body. In addition, the speakers of both houses are considered *ex officio* members.

The legislative process through which bills become law involves one or both houses of the Parliament, depending on the issue under consideration. Bills not affecting the function of county governments are considered only in the National Assembly. This is because the primary function of the Senate is to protect the interests of the county governments within the national government. The legislative process in both houses mainly follows five steps: publication of the proposed bill in the *Kenya Gazette*; first reading; second reading; referral to committee, where amendments are offered and considered; and third reading, including a vote. In addition to the consideration of a bill in Parliament, Kenya's President plays a key role in the legislative process by signing into law (or refusing to do so) every piece of legislation adopted by the National Assembly or both houses.

I. Background

The first legislative body in Kenya, which at the time was a British colony known as the “East-African Protectorate,” was created in 1907.¹ The Order in Council that established the body stated that

[t]here shall be a Legislative Council in and for the Protectorate, and the said Council shall consist of the Governor and such persons, not being less than two at any time, as His Majesty may direct by any Instructions under His Majesty's Sign Manual and Signet,

¹ East Africa Order in Council, 1906, § 7 (May 15, 1907), 9(181) OFFICIAL GAZETTE OF THE EAST AFRICA AND UGANDA PROTECTORATES (May 15, 1907).

or through one of His Majesty's Principal Secretaries of State, and all such persons shall hold their places in the said Council during His Majesty's pleasure.²

The body, which was accorded limited authority to legislate on various matters "necessary for the peace, order, and good government of the Protectorate," consisted of the Governor of the Protectorate, who was the chair of the body, and six members, including four civil servants and two members appointed by the Governor.³ The members of the Council were all white; other races within the Protectorate (Africans, Asians, and Arabs) were legally ineligible.⁴ In 1919, an ordinance for the election of members of the Council was enacted; however, only British subjects of European origin could vote or stand for office.⁵ Through a 1924 amendment Indians and Arabs were permitted to vote and stand for election for seats in the Council.⁶ Although over the ensuing years persons of Arab and Indian descent were afforded the opportunity to serve as members of the body, it was only in 1944 that an African person was nominated to the Council.⁷ The number of Africans in the Council continued to increase over time; in 1948, there were four Africans in the Council and by 1958 the number of Africans in the Council had reached sixteen.⁸

Kenya gained its independence from Britain in December 1963 and a truly representative legislative body was established through the 1963 Independence Constitution and the introduction of universal franchise.⁹ Lawmaking authority under the 1963 Constitution was split vertically and horizontally. One of the main features of the 1963 Constitution was the creation of two-tier government structures, with national and regional administrative units.¹⁰ It established seven semi-autonomous regions with their own legislative and executive bodies.¹¹ The regional administrative units assumed many of the functions that previously were under the Provincial and District Commissioners before Kenya's independence.¹² Another important

² *Id.*

³ HUMPHREY SLADE, *THE PARLIAMENT OF KENYA* 11 (1967).

⁴ *Id.*; KARUTI KANYINGA, *KENYA DEMOCRACY AND POLITICAL PARTICIPATION: A REVIEW BY AFRIMAP, OPEN SOCIETY INITIATIVE FOR EASTERN AFRICA AND THE INSTITUTE FOR DEVELOPMENT STUDIES (IDS), UNIVERSITY OF NAIROBI* 180 (Mar. 2014).

⁵ Legislative Council Ordinance, No. 22 of 1919, §§ 9 & 10 (July 22, 1919), 21(663) OFFICIAL GAZETTE OF THE EAST AFRICA PROTECTORATE (July 23, 1919).

⁶ Legislative Council (Amendment) Ordinance, No. 1 of 1924, §§ 4 & 5, 26(923) OFFICIAL GAZETTE OF THE COLONY AND PROTECTORATE OF KENYA (SPECIAL ISSUE) (Jan. 5, 1924).

⁷ SLADE, *supra* note 3, at 11–13.

⁸ *Id.* at 14–15.

⁹ Kenya Order in Council, CONSTITUTION OF KENYA, sched. 2 (hereinafter 1963 CONSTITUTION), KENYA GAZETTE SUPPLEMENT No. 30 (Apr. 1963); Kenya is Granted Independence, South Africa History Online, <http://www.sahistory.org.za/dated-event/kenya-granted-independence>, archived at <https://perma.cc/D5RS-FDU3>.

¹⁰ Y.P. GHAI & J.P.W.B. MCAUSLAN, *PUBLIC LAW AND POLITICAL CHANGE IN KENYA* 177–78 (Oxford University Press, 1970).

¹¹ 1963 CONSTITUTION, ch. V.

¹² Kenya Human Rights Commission, *Independence Without Freedom: The Legitimization of Repressive Laws and Practices in Kenya*, in CONSTITUTIONAL LAW AND POLITICS IN AFRICA: A CASE STUDY OF KENYA 113, 122 (Kivutha Kibwana ed., 1998).

feature was the establishment of a bicameral legislature, the Senate and the House of Representatives.¹³ The Senate, which consisted of forty-one members elected from forty Districts and the city of Nairobi, was created mainly to safeguard the regional governments from undue interference from the national government.¹⁴ Another key feature of the Constitution designated the President as an elected member of the legislature and provided for appointment of members of his cabinet from among the members of the same body, similar to the Westminster parliamentary system.¹⁵

The House of Representatives and the Senate shared the legislative power of the national government in all but one respect: while all bills required the approval of both houses, financial matters were exclusively reserved for the House of Representatives.¹⁶

This constitutional structure, however, did not last long. The Kenya African National Union (KANU) Party, which won a landslide victory in the elections held in May 1963 leading up to Kenya's independence both at the national and local level, never had the intention of actually relinquishing power to the semi-autonomous regional administrations.¹⁷ At the beginning, the central government incapacitated the regions by refusing to make available the funds they needed to operate, it then eventually, through successive constitutional amendments, stripped the regions of most of their authority and turned Kenya into a unitary state.¹⁸ A constitutional amendment in 1965 effectively ended the autonomy of the regional administrations as envisaged by the Independence Constitution.¹⁹ The regional assemblies, which enjoyed exclusive legislative jurisdiction in a wide range of matters in their regions, were turned into mere provincial assemblies that had to take their cues on legislation from the Parliament by delegation.²⁰ Through a 1966 amendment to the Constitution, the Senate, which was initially established as a guardian of regional autonomy, was eliminated and its members were merged into what became a unicameral National Assembly.²¹

¹³ See Y.P. Ghai & J.P.W.B. McAuslan, *supra* note 10.

¹⁴ 1963 CONSTITUTION §§ 26 & 27; *see also* Kenya Human Rights Commission, *supra* note 12, at 122.

¹⁵ Conrad M. Bosire, *Kenya's Budding Bicameralism and Legislative-Executive Relations*, in SEPARATION OF POWERS IN AFRICAN CONSTITUTIONALISM 116 (2016).

¹⁶ 1963 CONSTITUTION §§ 49–51.

¹⁷ Rainer Grote, *The Republic of Kenya, Introductory Note*, in CONSTITUTIONS OF COUNTRIES OF THE WORLD: THE REPUBLIC OF KENYA 6 (Gisbert H. Flanz ed., Oceana Publications, 2008); Kenya is Granted Independence, South Africa History Online, *supra* note 9.

¹⁸ *Id.* at 22. *See also* P.H OKONDO, A COMMENTARY ON THE CONSTITUTION OF KENYA vi (Phoenix Publishers, 1995).

¹⁹ Constitution of Kenya (Amendment) Act No. 14 of 1965, 1st sched., KENYA GAZETTE SUPPLEMENT No. 44 (Acts No. 5) (June 8, 1965).

²⁰ *Id.*

²¹ Constitution of Kenya (Amendment) (No. 4) Act No. 40 of 1966, KENYA GAZETTE SUPPLEMENT ACTS (Jan. 4, 1967); Grote, *supra* note 17, at 7.

II. Current Constitutional Status and Role

Following the violent aftermath of the 2007 election, Kenya embarked on a major reform that culminated in the enactment of a new Constitution in 2010 and brought profound changes to the country's system of government, including the legislative body. The remainder of this report describes Kenya's current legislative structure and the workings of the legislature within the new constitutional framework.

The 2010 Constitution recreated Kenya's system of devolved government, which was one of the pillars of the Independence Constitution, by establishing forty-seven counties with their own legislative (county assembly) and executive (county executive) organs, and allocated considerable legislative and executive powers and functions to those governments.²² Significantly, also like the Independence Constitution, the current Constitution established a second house within the national legislature, the Senate, whose main purpose is to “serve and protect the interests of the counties and their governments.”²³ The Senate is a forty-seven member body, with each county constituting a single-member constituency.²⁴ Further, to reduce the level of influence of the executive over the legislative body and avoid additional abuses of power by the executive, Kenya sought to create a sharper separation of powers between the executive and legislative bodies by adopting a presidential system of government,²⁵ whereby none of the members of the executive are part of the legislative body.²⁶

The national legislative body shares its lawmaking power with county legislatures. The Constitution provides a list of areas of legislative competence of the national and county legislatures.²⁷ Generally, while the national legislature is authorized to legislate on matters of national import (including immigration, agriculture, labor standards, transportation, and education), the competence of the county legislatures is limited to matters of local significance—for instance, with regard to transportation matters, county legislatures may address issues concerning county roads, street lights, traffic, and parking.²⁸ The Constitution provides for a mechanism for resolving any conflict between national and county laws.²⁹

²² CONSTITUTION OF KENYA, 2010, §§ 6 & 176(1) (hereinafter 2010 CONSTITUTION), available on the University of Pretoria website, at http://www.icla.up.ac.za/images/constitutions/kenya_constitution.pdf, archived at <https://perma.cc/WT74-K5LC>.

²³ *Id.* § 96.

²⁴ *Id.* § 98.

²⁵ Bosire, *supra* note 15, at 117 & 122; Adams Oloo, *From A Hybrid System to a Pure Presidential System: Between Theory and Practice* (Apr. 9, 2013), available on the Friedrich Ebert Stiftung Kenya Office website, at <http://www.fes-kenya.org/media/publications/From%20a%20Hybrid%20System%20To%20a%20Pure%20Presidential%20System%20-%20Dr.%20Adams%20Oloo.pdf>, archived at <https://perma.cc/5C8W-9WDW>.

²⁶ 2010 CONSTITUTION §§ 131(3) & 152(3); Bosire, *supra* note 15, at 122.

²⁷ 2010 CONSTITUTION, 4th sched.

²⁸ *Id.*, pt. 2, 4th sched.

²⁹ *Id.* § 191.

In addition to its legislative function, the National Assembly is designed to act as a check on the executive branch. A key part of this function is exercised through the power of the purse; the body, among others, “appropriates funds for expenditure by the national government and other national state organs” and “exercises oversight over national revenue and its expenditure.”³⁰ In addition, the National Assembly reviews the conduct of the president and other high ranking executive officials and initiates the impeachment process.³¹ Further, it “approves declarations of war and extensions of states of emergency.”³²

While the horizontal and vertical distribution of the legislative authority in Kenya resembles that of the United States, it is important to note that there are various, substantial differences. For instance, unlike in the United States, the role of the Kenyan Senate is limited; it can only be involved in the adoption of legislation that has ramifications for county governments, and its oversight function with regard to the executive branch is limited to voting on proposals to impeach the President or a Deputy-President initiated in the National Assembly, which is, as noted above, a body that has broad oversight powers over executive organs.³³ In addition, also as noted above, the power to declare war and extend states of emergency is exclusively reserved to the National Assembly.³⁴ Also, unlike the United States where the Senate provides advice and consent for presidential appointments to key executive and judicial posts, in Kenya, this role is reserved for the National Assembly.³⁵ Further, the Kenyan President and his Deputy have no substantive or ceremonial link to the legislature.³⁶

III. Structure and Composition

A. Seat of Parliament

While Kenya’s past national legislatures were sequestered in Nairobi, the nation’s capital, this practice ended with the enactment of the 2010 Constitution.³⁷ The Constitution provides that a “sitting of either House may be held at any place within Kenya and may commence at any time that the House appoints.”³⁸ The Constitution further states that, after every general election, the President must issue a notice announcing the place and date for the first sitting of parliament.³⁹ According to one commentator, the purpose of this language in the Constitution is “to enhance

³⁰ *Id.* § 95.

³¹ *Id.*

³² *Id.*

³³ *Id.* §§ 95& 96.

³⁴ *Id.* § 95.

³⁵ *Id.* §§ 132 & 166.

³⁶ *Id.* §§ 131 & 147.

³⁷ P.L.O. LUMUMBA & LUIS FRANCESCHI, THE CONSTITUTION OF KENYA, 2010: AN INTRODUCTORY COMMENTARY 413 (2014).

³⁸ 2010 CONSTITUTION § 126.

³⁹ *Id.*

the image of the Legislature not as a den of the elites but as a truly representative Assembly.”⁴⁰ The commentator further notes that “[w]ith this development, it is hoped that the disappointed cries of many in the rural areas who soon after the dust of the electioneering period had settled would remark ‘There our MP goes to Nairobi. We will see him in five years’ time’; will be a thing of the past.”⁴¹

B. National Assembly and Senate Membership

The National Assembly is comprised of 290 members elected from single-member constituencies; forty-seven women representatives elected from the forty-seven counties, each constituting a single member constituency; and twelve special-interest representatives nominated by political parties in accordance with the proportion of their seats in the National Assembly.⁴² In addition, the Speaker of the National Assembly is an *ex officio* member of the body.⁴³

The Senate is composed of forty-seven members directly elected from each county; sixteen women nominated by the political parties in the Senate on the basis of the proportion of the seats they control; two representatives of the youth (a man and a woman); two representatives of persons with disabilities (also a man and a woman); and the Speaker of the Senate who, like his National Assembly counterpart, is also an *ex officio* member.⁴⁴

Elections for members of Parliament are held on the second Tuesday in August every five years. The term of each house of Parliament expires on the date of the next election.⁴⁵

C. Political Parties

In 2013, the year the last national elections were held, there were around sixty registered political parties in Kenya.⁴⁶ Following the most recent general elections, which were held in 2013, seats in Parliament were divided among seventeen parties, as follows:

⁴⁰ LUMUMBA & FRANCESCHI, *supra* note 37, at 413.

⁴¹ *Id.*

⁴² 2010 CONSTITUTION § 97.

⁴³ *Id.* §§ 97 & 106.

⁴⁴ *Id.*

⁴⁵ *Id.* §§ 101–102.

⁴⁶ *Registered Political Parties 2013*, INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC), <http://www.iebc.or.ke/index.php/downloads/item/political-party-membership-pdf> (last updated Oct 13, 2014), archived at <https://perma.cc/JW2Z-M3GE>; *General Elections*, IEBC, <http://www.iebc.or.ke/index.php/2015-01-15-11-10-10/general-elections> (last visited Dec. 21, 2016), archived at <https://perma.cc/U3XR-77NM>.

Table: Parties Represented in Parliament Following the 2012 Election

Party	National Assembly	Senate
Orange Democratic Alliance (ODM)	78	11
The National Alliance (TNA)	72	11
United Republican Party (URP)	62	9
Wiper Democratic Movement-Kenya (WDM-K)	19	4
United Democratic Forum Party (UDFP)	11	2
Forum for Restoration of Democracy-Kenya (FORD-K)	10	4
Kenya African National Union (KANU)	6	2
Alliance Party of Kenya (APK)	5	2
New Ford Kenya (NFK)	4	1
Party of Independent Candidate of Kenya (PICK)	4	1
Federal Party of Kenya (FPK)	3	
National Rainbow Coalition (CARC)	3	
Ford-People (FP)	3	
Kenya National Congress (KNC)	2	
Chama Cha Uzalendo (CCU)	2	
The Independent Party (TIP)	1	
Kenya African Democratic Union-Asili (KA-DU-A)	1	

Source: Data from INSTITUTE FOR EDUCATION IN DEMOCRACY, FROM LAW TO PRACTICE: A REPORT ON THE ASSESSMENT OF POLITICAL PARTIES' ADHERENCE TO THE LAW IN KENYA 44 (2015).

D. Role of the Speakers of the National Assembly and the Senate

As noted above, speakers of both houses of the Kenyan Parliament are *ex officio* members of the bodies. They are elected by each house according to their standing orders “from among persons who are qualified to be elected as members of Parliament but are not such members.”⁴⁷ The Speaker of each house of Parliament chairs “any sitting of the House of Parliament.”⁴⁸ Speakers

⁴⁷ 2010 CONSTITUTION § 106.

⁴⁸ *Id.* § 107.

of both houses are assisted by a Deputy Speaker who is elected from among the members of each house.⁴⁹ The Speaker of the National Assembly, assisted by the Speaker of the Senate, presides over joint sessions of Parliament.⁵⁰

The Speaker of either House has no vote on any question proposed for a decision and may not be counted as a member of the respective House for determining the number of members of Parliament for any purpose of voting.⁵¹

The Speaker of the National Assembly is second in the line of presidential succession following the Deputy President.⁵² However, unlike the Deputy President who, in the event of a vacancy in the office of the President, would assume the presidency and serve the rest of the term, the Speaker can serve for a maximum of sixty days until an election is held to fill the vacancy.⁵³

The speakers of both houses decide on any procedural questions not expressly provided for in the standing orders of the houses or other relevant rules.⁵⁴

E. Other Parliamentary Officers

In the National Assembly, the political leadership positions are held by the leader of the majority party (the person who is the leader of the largest party or coalition of parties) and the leader of the minority party (the person who is the leader of the second largest party or coalition of parties).⁵⁵ The leaders of the majority and minority parties designate majority and minority whips.⁵⁶

In the Senate, the political leadership consists of the Senate Majority Leader, the Senate Deputy Majority Leader, the Senate Majority Whip, and the Senate Deputy Majority Whip, all of whom are elected from among the members of the majority party (the largest party or coalition of parties in the Senate).⁵⁷ The leadership also includes a Senate Minority Leader, Deputy Senate Minority Leader, Senate Minority Whip, and Deputy Senate Minority Whip, all of whom are elected from among the members of the minority party (the second largest party or coalition of parties in the body).⁵⁸

⁴⁹ *Id.* § 106.

⁵⁰ *Id.*

⁵¹ *Id.* § 122.

⁵² *Id.* § 146.

⁵³ *Id.*

⁵⁴ Senate Standing Orders § 1 (Jan. 9, 2013), http://www.parliament.go.ke/the-senate/standing-orders/item/download/1554_4dfc7c0f14e207f631b826aa0b85ddd1, archived at <https://perma.cc/X3W8-X4FF>; National Assembly Standing Orders § 1 (Jan. 9, 2013), http://www.parliament.go.ke/the-national-assembly/standing-orders/item/download/40_222b24e2cb9a8077f8de3f3d6eb5fb5d, archived at <https://perma.cc/RMU8-D979>.

⁵⁵ 2010 CONSTITUTION § 108; National Assembly Standing Orders § 19.

⁵⁶ National Assembly Standing Orders § 2.

⁵⁷ Senate Standing Orders § 19.

⁵⁸ *Id.* § 20.

The Parliamentary Service Commission, a constitutional body whose functions include the “efficient and effective functioning of Parliament,” appoints a Clerk and a Senior Deputy Clerk for both the National Assembly and the Senate.⁵⁹ The clerk in each house is the “administrative and procedural head” of the body and manages its daily operations and activities.⁶⁰ The functions of the clerk also include advising the body on all “Parliamentary procedures, practices and conventions.”⁶¹

Other officers of the Kenyan Parliament include the Senate and National Assembly Sergeant-at-Arms, whose functions include performing “chamber and ceremonial duties,” maintenance of decorum, and providing protective security for persons and property, and the Hansard Editor of the National Assembly and Senate, whose functions include producing official records of both houses.⁶²

F. Parliamentary Committees

The Constitution provides that the National Assembly and the Senate may establish committees and make rules for the orderly conduct of their proceedings.⁶³ In addition, for the purposes of carrying out functions over which they share jurisdiction, the Constitution permits the National Assembly and the Senate to form joint committees and to jointly regulate the procedure of such committees.⁶⁴

The National Assembly and the Senate have each established three types of committees: departmental committees, standing committees, and housekeeping committees.⁶⁵ The composition of the committees mirrors the number of seats that the parties in each house control.⁶⁶ Committees in both houses enjoy subpoena powers and set their own agenda. While any lawmaker is permitted to participate in committee meetings, only committee members can

⁵⁹ 2010 CONSTITUTION §§ 127 & 128.

⁶⁰ *Offices of the National Assembly*, PARLIAMENT OF KENYA: THE NATIONAL ASSEMBLY, <http://www.parliament.go.ke/the-national-assembly/leadership/management-and-directorates> (last visited Dec. 21, 2016), archived at <https://perma.cc/FNJ5-4J42>; *Management and Directorates*, PARLIAMENT OF KENYA: THE SENATE, <http://www.parliament.go.ke/the-senate/management-and-directorates> (last visited Dec. 21, 2016), archived at <https://perma.cc/K42D-5EML>.

⁶¹ *Offices of the National Assembly*, *supra* note 59; *Management and Directorates*, *supra* note 59.

⁶² *Offices of the National Assembly*, *supra* note 59; *Management and Directorates*, *supra* note 59.

⁶³ 2010 CONSTITUTION § 124.

⁶⁴ *Id.*; LUMUMBA & FRANCESCHI, *supra* note 34, at 410.

⁶⁵ *National Assembly Committees: Mandate and Classification*, PARLIAMENT OF KENYA, <http://www.parliament.go.ke/the-national-assembly/committees> (last visited Dec. 22, 2016), archived at <https://perma.cc/KH5T-B5DD>; *Senate Committees: Mandate and Classification*, PARLIAMENT OF KENYA, <http://www.parliament.go.ke/the-senate/committees/mandate-and-classification> (last visited Dec. 22, 2016), archived at <https://perma.cc/S8SX-9CZQ>.

⁶⁶ KANYINGA, *supra* note 4, at 198.

participate in committee decision making.⁶⁷ Committee meetings are held in public, and hearing schedules are publicized in advance.⁶⁸

As noted above, the National Assembly and the Senate have also formed joint committees to deal with matters over which they share jurisdiction. These are the Joint Committee on National Cohesion and Equal Opportunity, whose role includes the monitoring and promoting of “measures relating to policy and program initiatives in pursuit of peace and national cohesion,” and the Joint Committee on Parliamentary Broadcasting and Library, whose mandate includes advising Parliament on issues regarding “public participation in Parliament.”⁶⁹

IV. Elections

As noted above, not all members of the Kenyan Parliament are directly elected by the Kenyan electorate. Of the 350 seats in the National Assembly, 290 are filled with members directly elected by voters of single-member constituencies, whereas 47 seats are reserved for women members who are also directly elected from each of the 47 counties, each county constituting a single constituency.⁷⁰ In the Senate, 47 of the 68 seats are filled with members directly elected by voters in the counties, each county constituting a single-member constituency.⁷¹

According to the Constitution, a general election to select members of the National Assembly and the Senate is conducted every five years, on the same day as the elections for President, county governors, and members of county assemblies.⁷² If there is a vacancy in either of the houses and the next general election is not scheduled to take place within the next three months of the vacancy, a by-election may be held to fill the seat.⁷³

A person vying for a seat in the National Assembly or the Senate may seek such office as a nominee of a political party or as an independent candidate.⁷⁴ To qualify to stand for an election for a seat as an independent candidate, a person must have the support of at least one thousand registered voters in the constituency if the person is interested in a seat in the National Assembly seat and the support of two thousand registered voters of a county for a seat in the Senate.⁷⁵

⁶⁷ *Id.*; Senate Standing Orders § 195; National Assembly Standing Orders § 191.

⁶⁸ KANYINGA, *supra* note 4, at 198.

⁶⁹ *National Assembly Committees: Mandate and Classification*, *supra* note 64; *Senate Committees: Mandate and Classification*, *supra* note 64.

⁷⁰ 2010 CONSTITUTION § 97.

⁷¹ *Id.* § 98.

⁷² *Id.* § 101; *General Elections*, IEBC, <http://www.iebc.or.ke/index.php/2015-01-15-11-10-10/general-elections> (last visited Dec. 22, 2016), archived at <https://perma.cc/3QPD-49GP>.

⁷³ 2010 CONSTITUTION § 101.

⁷⁴ *Id.* § 99.

⁷⁵ *Id.*

Parliamentary elections are decided by a simple majority of the votes cast in the election within the relevant constituency.⁷⁶

The electorate in a county or constituency may recall a member of Parliament before the expiration of his/her term under certain circumstances.⁷⁷ This may occur if the member, after having been afforded due process, is found to have violated Chapter 6 (on leadership and integrity) of the Kenyan Constitution or to have mismanaged public resources, or is convicted of violating the election laws.⁷⁸

In the 2013 general elections, around 86% of the 14,352,533 registered voters are said to have voted.⁷⁹ The Jubilee Alliance (a coalition in which the majority players are the TNA and URP), led by Uhuru Kenyatta, the incumbent President of Kenya, won 6,173,433 of the popular vote (50.07%), followed by the Coalition for Reform and Democracy (CORD) (mainly including ODM and WDM-K), which took 5,340,546 votes (43.31%).⁸⁰

V. Legislative Process

A. General

Under the Constitution, the Kenyan Parliament exercises its legislative authority by passing bills.⁸¹ While any bill may originate in the National Assembly, bills not concerning county governments may only be considered by the National Assembly.⁸² A bill affecting county governments may originate in the National Assembly or the Senate.⁸³ While a bill may be introduced by any member or committee of the relevant house, what are known as “money bills” may only be introduced in the National Assembly according to a specific process (see Part V(D), below).⁸⁴

⁷⁶ URAIA TRUST & INTERNATIONAL REPUBLICAN INSTITUTE, *THE CITIZEN HANDBOOK: EMPOWERING CITIZENS THROUGH CIVIC EDUCATION* 44 (2012).

⁷⁷ 2010 CONSTITUTION § 104; Elections Act 24 of 2011, § 45 (Dec. 2, 2011), available on the Kenya Law website, at <http://kenyalaw.org/lex/actview.xhtml?actid=No.%2024%20of%202011>, archived at <https://perma.cc/FKZ4-U3XJ>.

⁷⁸ Elections Act § 45.

⁷⁹ THE CARTER CENTER, *OBSERVING KENYA’S MARCH 2013 NATIONAL ELECTIONS: FINAL REPORT 5* (Oct. 16, 2013), https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/kenya-final-101613.pdf, archived at <https://perma.cc/HPF4-HSE9>; *Election Results*, IEBC, <http://www.iebc.or.ke/index.php/election-results> (last visited Jan. 10, 2017), archived at <https://perma.cc/BGX2-BMN6>.

⁸⁰ THE CARTER CENTER, *supra* note 78, at 5; EUROPEAN UNION, *ELECTION OBSERVATION MISSION TO KENYA: GENERAL ELECTIONS 2013 FINAL REPORT 5* (May 29, 2013), http://www.eods.eu/library/FR%20KENYA%2029.05.2013_en.pdf, archived at <https://perma.cc/SBA5-D56F>; *Election Results*, *supra* note 78.

⁸¹ 2010 CONSTITUTION § 109.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

B. Bills Concerning County Government

Bills concerning county government include bills that affect the functions and powers of county governments, have implications for the election of members of county governments, and impact the finances of county government.⁸⁵ These types of bills are further divided into what are known as ordinary and special bills. A special bill is one that relates to the election of members of county governments or annual revenue allocations to counties, whereas an ordinary bill is any other bill not considered a special bill.⁸⁶ Before either house takes up a bill, the Constitution requires that the speakers of the National Assembly and the Senate determine whether the bill is one that affects counties, and if so, whether it is an ordinary or special bill.⁸⁷

1. Ordinary Bills

If one of the houses passes an ordinary bill and the second house rejects it, the bill must be referred to the Mediation Committee (see Part V(C), below).⁸⁸ If the bill is passed by the second house with any amendment, it must be referred back to the originating house for reconsideration; however, if the originating house rejects the bill as amended, it must be referred back to the Mediation Committee.⁸⁹

2. Special Bills

The process involving special bills is different in one key respect: if the National Assembly wishes to change or reject a special bill passed in the Senate, it needs the support of at least two-thirds of its members.⁹⁰

C. Mediation Committee

The Mediation Committee was formed to reconcile bills referred to mediation under any of the above-described scenarios. Consisting of an equal number of members from the National Assembly and the Senate appointed by the Speaker of each house, the Mediation Committee's job is to reconcile two versions of the same bill. Upon completion of this process it sends a final version to both houses for an up-or-down vote.⁹¹ If the Committee is unable to agree on a version or the version it proposes is rejected by either house, the bill fails.⁹²

⁸⁵ *Id.* § 110.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* § 112.

⁸⁹ *Id.*

⁹⁰ *Id.* § 111.

⁹¹ *Id.* § 113.

⁹² *Id.*

D. Money Bills

The Constitution defines a “money bill” as a bill (excluding bills that relate to the annual division and allocation of revenue between the national and county governments) that includes provisions dealing with any of the following:

- (a) taxes;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or
- (e) matters incidental to any of those matters.⁹³

If the Speaker of the National Assembly is of the opinion that a particular proposal falls under the definition of a money bill, the body can proceed with its consideration of the proposal only “in accordance with the recommendation of the relevant committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.”⁹⁴

E. Presidential Assent and Referral

The Kenyan President plays a key role in the legislative process because all bills require his approval before they can take effect. Once a bill is passed by the appropriate body in Parliament, it is sent to the President’s desk for his assent; the President has fourteen days to either sign it into law or refer it back to Parliament for reconsideration.⁹⁵ If the President returns the bill to Parliament, the relevant house can either incorporate the changes suggested by the President and send it back to him for his signature or, as in the US, override the President’s reservations by passing the bill again with the support of at least two-thirds of the members of the relevant house.⁹⁶ If the President does not sign or return the bill to Parliament within fourteen days of receiving it, the bill is automatically enacted.⁹⁷

F. Procedure

The life of a bill from the time it is proposed until it is adopted by the relevant legislative body is long and complicated. The following steps reflect an abbreviated version of the process:

⁹³ *Id.* § 114. The terms “tax,” “public money,” and “loan” do not cover taxes, public money, or loans raised by county governments. *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* § 115.

⁹⁶ *Id.*

⁹⁷ *Id.*

- *Publication*: The bill is published in the *Kenya Gazette* to attract public attention and encourage participation.⁹⁸
- *First Reading*: The bill is referred to the relevant committee.⁹⁹
- *Second Reading*: Members discuss the bill and the position of the “mover” (sponsor) as well as the report of the relevant committee. No specific amendments are allowed at this stage except for proposals to defer the second reading.¹⁰⁰
- *Committee of the Whole House*: This is the stage at which amendments are proposed and voted on.¹⁰¹
- *Third Reading*: Members conduct further debate on the contents of the bill. While no specific amendments are permitted at this stage, proposing a deferral of the third reading is permitted.¹⁰² If the bill is voted on and receives the necessary support, it is considered passed in the relevant body where it is considered.¹⁰³

As noted above, depending on the type of bill, it may be sent to the other house of Parliament for concurrence or to the President for his assent. Once the President signs the bill into law, it must then be published in the *Kenya Gazette* as an Act of Parliament within seven days.¹⁰⁴

VI. Contemporary Issues

In 2016, the Kenyan Parliament considered various proposals. For the year, fourteen bills were proposed in the Senate, including the County Statistics Bill, the County Boundaries Bill, and the County Allocation of Revenue Bill.¹⁰⁵ Thirty-three bills were proposed in the National Assembly; these included the Anti-Doping Bill, the Value Added Tax (Amendment) Bill, the Witness Protection (Amendment) Bill, and the Refugees Bill.¹⁰⁶

⁹⁸ KENYA LAW REFORM COMMISSION, A GUIDE TO THE LEGISLATIVE PROCESS IN KENYA 69 (2015), <http://www.klrc.go.ke/images/images/downloads/klrc-a-guide-to-the-legislative-process-in-kenya.pdf>, archived at <https://perma.cc/3APD-AFWU>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 68.

¹⁰⁴ 2010 CONSTITUTION § 116.

¹⁰⁵ *Senate Bills 2016*, KENYA LAW, <http://kenyalaw.org/kl/index.php?id=5990> (last visited Dec. 27, 2016), archived at <https://perma.cc/S5AY-VKPN>.

¹⁰⁶ *National Assembly Bills 2016*, KENYA LAW, <http://kenyalaw.org/kl/index.php?id=5991> (last visited Dec. 27, 2016), archived at <https://perma.cc/5TBZ-LD69>.

Twenty-four bills appear to have been enacted in 2016.¹⁰⁷ These included the Anti-Doping Act (No. 5 of 2016), the Climate Change Act (No. 11 of 2016), the Judiciary Fund Act (No. 16 of 2016), and the Private Security Regulation Act (No. 13 of 2016).¹⁰⁸

¹⁰⁷ *Recent Legislation – 2016*, KENYA LAW, <http://kenyalaw.org/kl/index.php?id=5995> (last visited Dec. 27, 2016), archived at <https://perma.cc/HDG6-SXQ3>.

¹⁰⁸ *Id.*